UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1998/NGO/3
14 July 1998

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Fiftieth session
Item 8 of the provisional agenda

PREVENTION OF DISCRIMINATION AGAINST AND THE PROTECTION OF MINORITIES

Written statement submitted by the Association for World Education, a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[7 July 1998]

GE.98-13177 (E)

Blasphemy legislation in Pakistan's Penal Code

1. The Association for World Education submits the present written statement in memory of a prominent human rights defender, the late John Joseph, Bishop of Faisalabad, Chairman of the Human Rights Commission established by the Catholic Bishops' Conference of Pakistan, who killed himself on 6 May 1998 to protest the continued application of Pakistan's blasphemy laws.

2. Bishop John Joseph's suicide was related to the "blasphemy" case of Ayub Masih, who had been incarcerated in solitary confinement since 14 October 1996 and sentenced to death on 27 April 1998 by Sessions Court Judge Rana Abdul Ghaffar. The distinguished lawyer Ms. Asma Jahangir, who had secured the release of Salamat and Rehmet Masih in 1995 on a similar charge of blasphemy, is also involved in the defence of Ayub Masih. The appeal against the death sentence is still pending in the High Court.

3. A few hours before his tragic death, Bishop Joseph publicly declared that the charges were false and were merely concocted to force 15 Christian families to drop a local land dispute with Muslim villagers. In his last circular letter, published on 7 May in the Lahore edition of the newspaper Dawn, he strongly urged Church leaders, parliamentarians, Muslims, Christians, Hindus and all segments of society in Pakistan to support the campaign for the repeal of the iniquitous blasphemy laws. This legislation violates the international instruments that were signed and ratified by Pakistan.

Background to the introduction of the blasphemy legislation

4. During the presidency of General Zia ul-Haq (1977-1988) a Federal Shariat, or legal Court (FSC), was instituted, which was granted "jurisdiction over convictions or acquittals from district courts in cases involving ... Islamic criminal laws; exclusive jurisdiction to hear [petitions] ... challenging 'any law or provision of law' as repugnant to the Holy Koran; exclusive jurisdiction to examine 'any law or provision of law' for repugnancy to the Holy Koran ...." 1/ Although non-Muslims may not appear before the Shariat Court, they are subject to its rulings.

5. President Zia ul-Haq introduced the Hudood (Punishment) Ordinances in 1984, which "define crimes against Islam" and "enforce punishment for those who commit such crimes". In hudood cases, the testimony of a non-Muslim is considered to be worth half that of a Muslim. Section 298-B and 298-C of the Pakistan Penal Code singles out, pejoratively, the "non-Muslim" minority group Ahamadiyya - considered by Sunni theologians as heretics.

The Sub-Commission's 1985 reaction to Ordinance XX (1984)

6. Ordinance XX was incorporated into the 1985 Constitution. That year, the Sub-Commission adopted resolution 1985/21 in which the Sub-Commission:

> "1. Expresses its grave concern at the promulgation by Pakistan of Ordinance XX of 28 April 1984 which, prima facie, violates the right to liberty and security of the person, the right to freedom of thought,

expression, conscience and religion, the right of religious minorities to profess and practise their own religion, and the right to an effective legal remedy;

"2. Further expresses its grave concern that persons charged with and arrested for violations of Ordinance XX have been reportedly subjected to various punishments and confiscations of personal property, and that the affected groups as a whole have been subjected to discrimination in employment and education and to the defacement of their religious property;

"3. Requests the Commission on Human Rights to call on the Government of Pakistan to repeal Ordinance XX and to restore the human rights and fundamental freedoms of all persons in its jurisdiction."

7. In 1986, the Government of Pakistan used the power granted it by Ordinance XX to insert section 295-C into the Pakistan Legal Code, making the death sentence mandatory for anyone convicted of blaspheming the Prophet Muhammad. From 1986 to 1993, over 200 Ahmadis were charged with "blasphemy" but none were convicted. Soon this law, originally directed at the Ahmadis, was being used primarily against Christians and also against Muslims, several of whom have been convicted.

8. In 1993 a further bill, generally supported by anti-Shi'a groups as a means of persecuting Shi'as, was introduced to extend the law to the defiling of the Prophet's family and companions.

9. An editorial in the Pakistani newspaper The Frontier Post stated: "Now, not only has theocracy been presented as a model for law and procedure but discrimination on the basis of religion has become a part of the law." (Peter Jacob Dildar, "Minorities under the law", 18 June 1994).

10. On 10 February 1995, the United Nations special procedures system was used to send an urgent appeal to the Government of Pakistan regarding the cases of a 13-year-old illiterate boy, Salamat Masih - accused of having written blasphemous words on a mosque wall - and his uncle Rehmet Masih. A reply was received within four days and the international outcry in this case resulted in their release from prison; they fled to Europe.

11. Over a dozen Christians have been jailed under the blasphemy laws, four of whom were reported killed in detention. Ayub Masih is the fourth Christian to be condemned to death; the other three were acquitted on appeal and fled Pakistan. This is the background for Bishop John Joseph's tragic "sacrificial death".

A death sentence for "blasphemy" is illegitimate

12. The Association for World Education questions the legitimacy of Pakistan's blasphemy laws under the international instruments and the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and fundamental human rights standards.

13. In addition to questioning the legitimacy of such blasphemy laws, our Association wishes to raise questions concerning the conditions in which trials for blasphemy are conducted: the right to a fair and speedy trial; the independence of the judiciary; the safety of defence lawyers; and the holding of the trial in a serene atmosphere, isolated from political, social and religious pressures. We ask the Sub-Commission to undertake inquiries as to whether Pakistan's courts are meeting these international human rights standards in all trials related to charges of blasphemy.

14. In particular, we wish to stress five points in regard to blasphemy charges under the section 295 of Pakistan's Penal Code:

(a) Blasphemy, as a civil crime under section 295-B and 295-C, is tried in civil courts where only Muslim judges may hear cases;

(b) The death penalty is a punishment for blasphemy under section 295-C;

(c) Blasphemy accusations may be applied to non-Muslims, whose testimony is given less weight in court than Muslims;

(d) Blasphemy charges may be used to mask other, more material or political, motivations;

(e) Blasphemy charges are being increasingly used as a way of limiting discussion and debate - what has been called since 1989 the "Rushdie syndrome".

15. In a statement on 21 August 1992 to the forty-fourth session of the Sub-Commission, a member of the Sub-Commission, Mrs. Clair Palley, declared:

> "This is not a century - and certainly the twenty-first century is not one - in which the death penalty should exist for heresy. I hope the Sub-Commission will, as a body, make it clear that both fatwas and the death penalty for heresy are themselves gross violations of human rights." (Verbatim transcription. See also E/CN.4/Sub.2/1992/SR.27, paras. 70-71).

A Sub-Commission resolution on "blasphemy" charges is a necessity

16. In the same spirit, the Association for World Education calls on the fiftieth session of the Sub-Commission to adopt a resolution along the lines that: "this is not a century, nor is the twenty-first century one, in which the death penalty should exist for blasphemy".

17. The use of an accusation of "blasphemy" - an ill-defined term which can be expanded to mean anything that any accuser dislikes - merits serious attention. Some accusations of "blasphemy" can be ill-disguised death threats - as was the case in 1994 regarding the United Nations Special Rapporteur for the Sudan, Mr. Gáspár Biró - and when they are not, they can be considered as sufficiently dangerous to lead to kowtowing, and even censorship at the United Nations.

18. The Association for World Education has provided essential facts about the "UN Blasphemy Affair" of 18 April 1997 in a Sub-Commission statement (E/CN.4/Sub.2/1997/NGO/3), in several oral statements made to last year's Sub-Commission and the fifty-fourth session of the Commission, and more fully in two out of three articles recently published. 2/

19. Such rigid doctrinal accusations of "blasphemy" - charges that are constantly revived to the detriment of basic human rights in Pakistan and elsewhere - merit unreserved condemnation by the United Nations now.

Notes

1/ Charles H. Kennedy, "Repugnancy to Islam - Who Decides? Islam and Legal Reform in Pakistan", in International and Comparative Law, vol. 41, Part 4, October 1992, p. 772.

2/ René Wadlow and David Littman, "Dangerous Censorship of a U.N. Special Rapporteur", Justice, No. 14, September 1997, pp. 10-17; "Blasphemy at the United Nations?", Middle East Quarterly, December 1997, pp. 85-86; "UN Special Rapporteur Censured on 'Islamist and Arab Antisemitism'", Midstream, February-March 1998, pp. 8-13.